STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES Land Division Honolulu, Hawaii 96813

January 13, 2012

Board of Land and Natural Resources State of Hawaii Honolulu, Hawaii

<u>OAHU</u>

PSF No.: 11od-066

Grant of Term, Non-Exclusive Easement to James Hugh Duncan and Barbara-Jeann Duncan for Seawall and Revetment Purposes, Lanikai, Koolaupoko, Oahu, Tax Map Key: (1) 4-3-005:seaward of 056.

APPLICANT:

James Hugh Duncan and Barbara-Jeann Duncan, husband and wife, tenant by the entirety.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Lanikai, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-3-005:seaward of 056, as shown on the attached map labeled **Exhibit A**.

AREA:

970 square feet, more or less.

ZONING:

State Land Use District:

Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall and revetment over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." See Remarks Section and Exhibit B.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

<u>APPLICANT REQUIREMENTS:</u>

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

On September 13, 1968, the previous owners of the subject and three adjoining properties

obtained the Shore Water Construction Permit No. 1395 (SWCP) (**Exhibit C**) issued by the Department of Transportation, Harbors Division. The work covered in the permit was "protective stone blanket for beach erosion control". The location of the improvement is shown on Exhibit A.

The SWCP required approval from the Army Corps of Engineers, Department of Land and Natural Resources, and the County's Planning Department. The approvals were subsequently obtained. In particular, the Board, on October 11, 1968 (item F-11), approved the right-of-entry for the construction of the subject improvement. See letter from the Department to the applicants dated October 14, 1968 and the Board submittal attached as **Exhibit D1** & **D2**.

Mr. & Mrs. Duncan, the current owners of the subject property, intend to sell the subject property. During their due diligence, the subject encroachment, comprising portions of seawall and revetment, is documented in the survey map and photos attached as **Exhibit E** and **Exhibit F** respectively.

Recently, Land Division (LD) met the applicant's agent to discuss the requirement for obtaining a land disposition pertaining to the subject encroachment. LD believes that the subject improvement is located makai of the recorded boundary. Therefore, it is encroaching on State lands and a land disposition is required. The issuance of a right-pf-entry by the Board in 1968 was to allow commencement of the construction work. The improvement should have been covered by a proper land disposition to document the responsibility of the abutting owners.

Office of Conservation and Coastal Lands (OCCL), by its letter dated September 18, 2008 (**Exhibit G**), supports a disposition request for the encroachment. In addition, OCCL suggests proper signage for public access to the encroachment area to be placed at the location. Staff does not believe it is necessary because allowing public access to the non-exclusive easement area is a standard condition.

Department of Facility Maintenance, Department of Parks and Recreation, and Board of Water Supply do not have any objections/comments to the request. Department of Health, Department of Hawaiian Home Lands, Division of Aquatic Resources, State Historic Preservation Division, Department of Planning and Permitting, and the Office of Hawaiian Affairs have not responded as of the suspense date.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

- 2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-3-005:056, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to noncompliance with such terms and conditions.
- 3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to James Hugh Duncan and Barbara-Jeann Duncan covering the subject area for seawall and revetment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-3-005:056, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General;
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

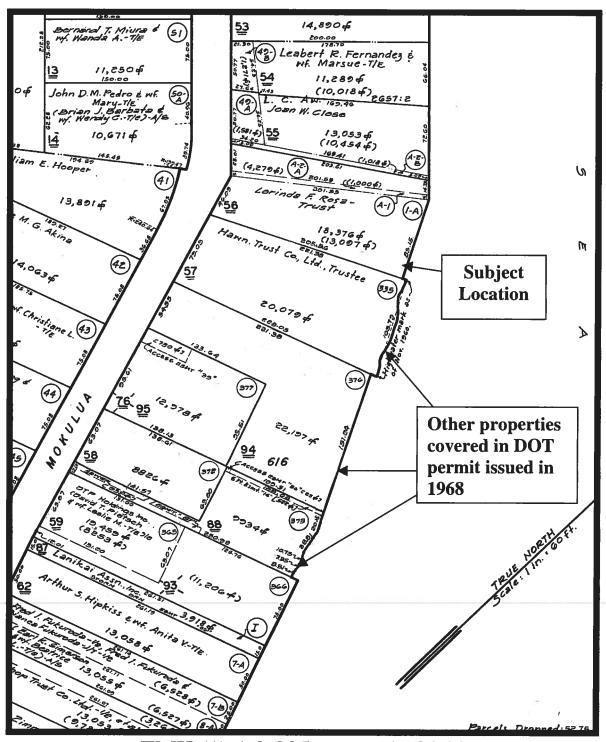
Respectfully Submitted,

Barry Cheung

District Land Agent

APPROVED FOR SUBMITTAL:

William J. Aila, Jr., Chairperson



TMK (1) 4-3-005:seaward of 056

EXHIBIT A

NEIL ABERCROMBIE GOVERNOR OF HAWAII





STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621 HONOLULU, HAWAII 96809 WILLIAM J. AILA, JR. CHARPIRSON BOARD OF LAND AND NATURAL RESOURCES COMMISSION ON WATER RESOURCE MANAGEMENT

> GUY H. KAULUKUKUI FIRST DEPUTY

WILLIAM M. TAM DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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KAROOLAWE SLAND RESERVE COMMISSION
LAND
STATE PARKS

January 13, 2012

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title:

Grant of Term, Non-Exclusive Easement for Seawall and

Revetment Purposes

Project / Reference No.:

PSF 11od-066

Project Location:

Lanikai, Koolaupoko, Oahu, Tax Map Key: (1) 4-3-

005:seaward of 056

Project Description:

Grant of Term, Non-Exclusive Easement for Seawall and

Revetment Purposes

Chap. 343 Trigger(s):

Use of State Land

Exemption Class No.:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The construction of the subject encroachment was allowed by the Department of Transportation in 1968. See Exhibit C of the Board submittal for copy of the permit. It predated the enactment date of Chapter 343 in 1974. The request is to document the encroachment by the issuance of an easement which would require, among other terms and conditions of the easement, the grantee provide liability insurance for the easement area. The applicant for the easement does not propose any new use of State lands or funds.

Staff does not anticipate the request will result in major alterations in the conditions of land, water and vegetation. Therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

Consulted Parties

Office of Conservation and Coastal Lands

Recommendation:

That the Board finds this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

William J. Aila, Jr., Chairperson

<u>| (2/14/1)</u> | Date

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Application No. 1395

HARBORS DIVISION

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work. To cover the cost of engineering investigation a FEE OF \$25.00 MUST ACCOMPANY THIS APPLICA-

· Receipt to G 6593

TION.

PERMIT NO. 1395

DEPARTMENT OF TRANSPORTATION

HARBORS DIVISION

state of II., vali

APPROVED BY DEPARTMENT OF TRANSPORTMENT, HARBORS DIVISION

Work miles this permit is approved as described in the foregoing application subject to the following CCNDT. TONS and must be completed prior to <u>September 25, 1269</u>, or permit will be considered null and void:

- (1) Permittee shall indemnify and hold the State of Hawaii, its boards, commissions, agencies, criters, servants, employees, and agents free and harmless from any and all lawsuits or actions of every nature and kind which may be brought for or on account of any personal in any or death, or property can age, direct or incheet, arising or growing out of Permittee's exercise of the rights granted under this permit.
- (2) Permittee shall obey and comply with all applicable ordinances, laws, rules and regulations of the City & County of Honolulu, the State, and of the United States of America, and of any political subdivision or agency, authority, or commission with respect to all phases of the construction, operation, and maintenance of any and all improvements authorized under this permit.
- (3) Permittee shall take out and keep current all licenses and permits (whether county, state, or federal) required for the conduct of its operations and/or construction, maintenance, and repair of any and all improvements authorized under this permit, and shall pay promptly when due all fees therefor.
- (4) The Department of Transporation hereby reserves the right to cancel this permit at any time and for any reason or to require the Permittee to suspend operations without being liable to the Permittee in any way whatsoever for damages.
- (5) Permittee shall obtain approval, before construction, from the following agencies:
 - 1. Department of Land and Natural Resources
 - 2. U. S. Army Corps of Engineers
 - 3. City and County of Honolulu's Planning Department

Acting /Chief, Harbors Divis

Date September 25, 1968

RECEIVED

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HOHOLOH :

October 14, 1988

Mr. Flia A. Long c/o Long & Melone, Ltd. Suite 601, 333 Queen St. Honolulu, Hawaii 96813

Dear Sir:

This is in reference to our letter of October 2, 1968 granting you, Mr. Fred F. Hedemann, Havaiian Trust Co., Ltd. (Trustee) and Mr. John F. Rosa interim right-of-entry to construct a protective stone "blanket" immediately seaward of your respective properties at Lanikai, Kailua, Oahu in accordance with the conditions of Department of Transportation Harbors Division Shore Waters Construction Permit Mo. 1395.

At its meeting of October 11, 1968 under agenda Item P-11 (copy enclosed), the Board of Land and Natural Resources confirmed the above right-of-entry to construct the protective stone "blanket".

Should you have any questions, please feel free to contact us.

Very truly yours,

Program-Administrator Division of Land Management

FLOG.

cu: Narbors Div., Dept. of Transportation
V. S. Army Corps of Engineers, Non.
City & County of Ionalulu, Bluesia Port
Ar. Fred F. Hedomann
Hawmian Trust Co., Ltd.
Ar. John F. Epsa

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES MCMOLULU, MAMANII Division of Land Management

October 11, 1968 -

Board of Land and Natural Resources Honolulu, Hawaii

Gentlemen:

OAHU

Subject:

Request for Right-of-Entry to Construct Protective Stone Blanket at Lanikai, Kailua, Oahu

Messrs. Elia A. Long, Fred F. Hedemann and John F. Rosa and Hawaiian Trust Co., Ltd. (Trustee) have been issued Shore Waters Construction Permit No. 1395 dated September 25, 1968 by the Department of Transportation, Harbors Division, to construct a protective stone 'blanket' on Government beach seaward of their respective properties at Lanikai, Kailua, Oahu to prevent further erosion of the shoreline and undermining of retaining walls.

The protective stone 'blanket' will be wedged-shaped, approximately six (6) ft. wide and run for a distance of some 220 ft. Construction details are shown on the drawing titled Protective Stone Blanket for Beach Erosion Control (September 11, 1968) and labeled Land Board Exhibit "A". The 'blanket' will not be grouted.

By letter dated October 2, 1968, the above parties were granted an interim right-of-entry to construct the stone 'blanket' in accordance with the conditions of Shore Waters Construction Permit No. 1395.

RECOMMENDATION:

That the Board confirm the above right-of-entry to construct the protective stone 'blanket' subject to the conditions of Department of Transportation Harbors Division Shore Waters Construction Permit No. 1395, with particular reference to Condition (5), 2. and 3., requiring prior approval of such construction from the U. S. Army Corps of Engineers and the City and County of Honolulu Planning Department, in addition to such other terms and conditions as may be prescribed by the Chairman.

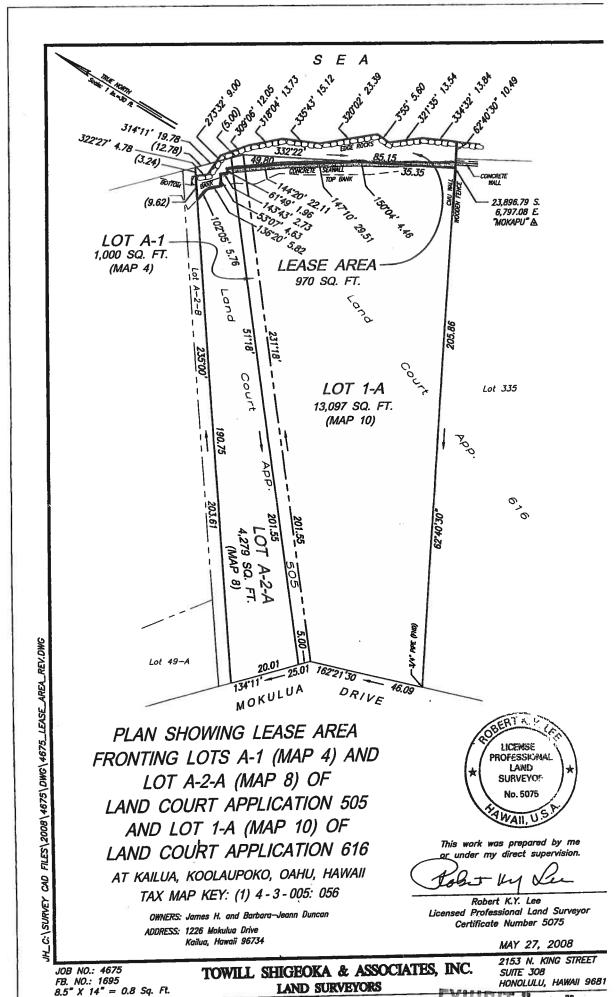
Respectfully submitted,

JAMÉS J. DETOR Program Administrator Division of Land Management

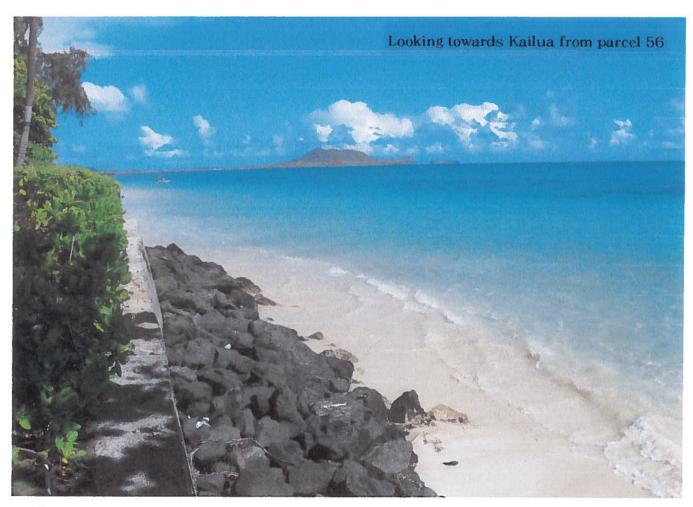
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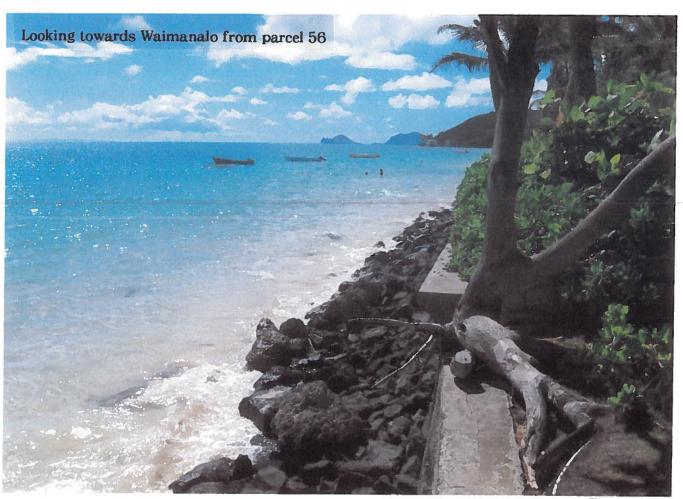
SUNAO KIDO, Chairman

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311"E"





LINDA LINGLE GOVERNOR OF HAWAI





STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES Office of Conservation and Coastal Lands

POST OFFICE BOX 621 HONOLULU, HAWAI' I 96809 LAURA H. THIELEN
CHARPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI

KEN C. KAWAHARA DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILD LIFE
HISTORIC PRESERVATION
KAHOOLAWE ELAND RESERVATION
KAHOOLAWE ELAND RESERVE COMMISSION
LAND
STATE PARKS

REF:DLNR:.CC

File Number Encroachment: OA-09-001

SEP 18 2008

Mr. Hugh Duncan

Lanikai, Hawaii 96734

SUBJECT: Request to Resolve State Land Encroachment at Oahu, TMK (1) 4-3-005:056, owner Mr. Hugh Duncan

, Lanikai,

This is in response to your July 2008 request to resolve the shoreline encroachment at Tax Map Key (1) 4-3-005:056.

According to information and maps contained with your request, there appears to be approximately 970 square feet of encroachment (revetment and portion of seawall) makai of the subject property onto State land.

Office of Conservation and Coastal Lands (OCCL) staff was unable to locate any construction permit or other land use authorization permits at the State for the seawall, and the applicant provided none. However, the applicant submitted a datable ground photograph and notarized statement that showed the seawall, in its current shape and location, present in 1953. It appears, from the evidence presented, that the structure is intact and unaltered since prior to the inception of the Conservation District rules.

The applicant provided both a City and County permit and a Department of Land and Natural Resources (DLNR) Right of Entry for the placement of the rock blanket makai of the seawall.

As a consequence, DLNR does not consider either of the encroachments to be Conservation District violations. Should the OCCL find that the structure has been significantly altered since the inception of the Conservation District rules, the OCCL may reconsider this finding.

The Board of Land and Natural Resource (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

XHIBIT"G"

- 1. Protect/preserve/enhance public shoreline access;
- 2. Protect/preserve/enhance public beach areas;
- 3. Protect adjacent properties;
- 4. Protect property and important facilities/structures from erosion damages; and
- 5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted.

Surrounding Land Uses:

The surrounding uses are primarily residential.

Beach Resources:

This parcel is at the southern end of Lanikai Beach and is effectively the first armored shoreline fronting a wet beach. Parcels to the south have no significant dry beach resource, and have shoreline armoring structures. Parcels to the north have an increasingly wide beach resource makai of the vegetated primary frontal dune. Though the beach resource directly makai of the subject parcel is in poor condition, the beach resource significantly improves to the north. The subject parcel is the transition point for the beach resource.

Public Access:

Access along the shoreline armoring is very poor, though lateral access along the beach fronting the northern neighbor is very good. Lateral access along the dry beach, from the north, terminates at the subject property's shoreline structures.

Effect of Removing the Encroachment on:

Beach Resources: Removal of the revetment and the portion of the seawall that is encroaching will likely release sandy sediment impounded behind the shoreline structures. The limited extent of the seawall that is encroaching for the full depth of the seawall will significantly limit the volume of sediment released into the active beach system. Removal of the revetment at the toe of the seawall will likely increase reflected wave energy in the nearshore environment, speeding beach loss fronting the structure. Removal of the boulders will remove a significant volume of material that has equilibrated with the diminished beach system fronting the parcel, likely causing deflation. Though removal of the encroaching portion of the structure will make some coastal sediment available, it will not be as effective as removing the entire shoreline protection structure.

Public Access: OCCL staff has determined that public access is likely to be improved makai of the parcel if the revetment is removed. Improved access will be ephemeral though, as the beach is quickly being lost makai of the parcel, and will be pinched out against the seawall. Beach loss is likely to be accelerated by removal of the revetment, due to increased reflected wave energy and a significant reduction in substrate volume.

Affect on Adjacent Properties: Removal of the revetment is unlikely to impact the mauka or side parcels. Removal of the southern end of the seawall is likely to destabilize the abutting seawall and the non-encroaching sections of the subject parcel's seawall.

It has been a general policy and practice of the OCCL to support easement requests that have no discernable effect on beach and recreational resources, and do not act as a detriment to public access. In cases where the encroachment serves as primary erosion control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered.

Upon review and careful consideration of the information gathered on this case, staff has determined that the requirements stated in HRS § 205A, HRS § 183C, and in the OCCL's evaluation criteria would support a disposition request being processed for both of the encroachments. The OCCL suggests that proper signage be placed identifying that the revetment and portions of the seawall on State land are open to the public. In addition, the OCCL also suggests any improvements or replacement of structures have a requirement for an integrated public access component to address the mandated lateral shoreline access parameters stated in HRS § 115.

Please feel free to contact Chris Conger, Sea Grant Extension Agent at the Office of Conservation and Coastal Lands at 587-0049.

Sincerely,

Samuel J. Lemmo, ADMINISTRATOR

Office of Conservation and Coastal Lands

cc: Oahu Board Member

Chairperson's Office

Land Division

Office of Hawaiian Affairs, Grant Arnold

DPP, City & County of Honolulu